



Bill Brady

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09300SB2301sam001

LRB093 19642 SAS 47776 a

1 AMENDMENT TO SENATE BILL 2301

2 AMENDMENT NO. _____. Amend Senate Bill 2301 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Insurance Code is amended by
5 changing Section 445 as follows:

6 (215 ILCS 5/445) (from Ch. 73, par. 1057)

7 Sec. 445. Surplus line.

8 (1) Surplus line defined; surplus line insurer
9 requirements. Surplus line insurance is insurance on an
10 Illinois risk of the kinds specified in Classes 2 and 3 of
11 Section 4 of this Code procured from an unauthorized insurer or
12 a domestic surplus line insurer as defined in Section 445a
13 after the insurance producer representing the insured or the
14 surplus line producer is unable, after diligent effort, to
15 procure said insurance from insurers which are authorized to
16 transact business in this State other than domestic surplus
17 line insurers as defined in Section 445a.

18 Insurance producers may procure surplus line insurance
19 only if licensed as a surplus line producer under this Section
20 and may procure that insurance only from an unauthorized
21 insurer or from a domestic surplus line insurer as defined in
22 Section 445a:

23 (a) that based upon information available to the
24 surplus line producer has a policyholders surplus of not

1 less than \$15,000,000 determined in accordance with
2 accounting rules that are applicable to authorized
3 insurers; and

4 (b) that has standards of solvency and management that
5 are adequate for the protection of policyholders; and

6 (c) where an unauthorized insurer does not meet the
7 standards set forth in (a) and (b) above, a surplus line
8 producer may, if necessary, procure insurance from that
9 insurer only if prior written warning of such fact or
10 condition is given to the insured by the insurance producer
11 or surplus line producer.

12 (2) Surplus line producer; license. Any licensed producer
13 who is a resident of this State, or any nonresident who
14 qualifies under Section 500-40, may be licensed as a surplus
15 line producer upon:

16 (a) completing a prelicensing course of study. The
17 course provided for by this Section shall be conducted
18 under rules and regulations prescribed by the Director. The
19 Director may administer the course or may make
20 arrangements, including contracting with an outside
21 educational service, for administering the course and
22 collecting the non-refundable application fee provided for
23 in this subsection. Any charges assessed by the Director or
24 the educational service for administering the course shall
25 be paid directly by the individual applicants. Each
26 applicant required to take the course shall enclose with
27 the application a non-refundable \$20 application fee
28 payable to the Director plus a separate course
29 administration fee. An applicant who fails to appear for
30 the course as scheduled, or appears but fails to complete
31 the course, shall not be entitled to any refund, and shall
32 be required to submit a new request to attend the course
33 together with all the requisite fees before being
34 rescheduled for another course at a later date; and

1 (b) payment of an annual license fee of \$400; and

2 (c) procurement of the surety bond required in
3 subsection (4) of this Section.

4 A surplus line producer so licensed shall keep a separate
5 account of the business transacted thereunder which shall be
6 open at all times to the inspection of the Director or his
7 representative.

8 The prelicensing course of study requirement in (a) above
9 shall not apply to insurance producers who were licensed under
10 the Illinois surplus line law on or before the effective date
11 of this amendatory Act of the 92nd General Assembly.

12 (3) Taxes and reports.

13 (a) Surplus line tax and penalty for late payment.

14 For each policy or contract of insurance issued under his
15 or her license, and any subsequent endorsements thereto, a
16 surplus line producer shall compute a surplus line tax based on
17 the gross premium less returned premium according to the
18 following table:

<u>Policy Effective Date</u>	<u>Tax Rate</u>
<u>Prior to July 1, 2003</u>	<u>3.0%</u>
<u>July 1, 2003 & thereafter</u>	<u>3.5%</u>

22 The tax rate in effect on the policy effective date shall
23 apply to the policy and to all subsequent endorsements for that
24 policy.

25 A surplus line producer shall file with the Director on
26 or before February 1 and August 1 of each year a report in
27 the form prescribed by the Director on all surplus line
28 insurance policies and endorsements filed with the Surplus
29 Line Association of Illinois pursuant to subsection (4) of
30 this Section ~~procured from unauthorized insurers~~ during
31 the preceding 6 month period ending December 31 or June 30
32 respectively, and on the filing of such report shall pay to
33 the Director for the use and benefit of the State the
34 surplus line taxes for the reported policies and

1 endorsements. At no time shall a surplus line producer pay
2 surplus line tax, relating to a surplus line insurance
3 policy or endorsement, that is different than the tax
4 computed at the rate that was in effect at the time that
5 policy incepted. ~~a sum equal to 3.5% of the gross premiums~~
6 ~~less returned premiums upon all surplus line insurance~~
7 ~~procured or cancelled during the preceding 6 months.~~

8 Any surplus line producer who fails to pay the full
9 amount due under this subsection is liable, in addition to
10 the amount due, for such penalty and interest charges as
11 are provided for under Section 412 of this Code. The
12 Director, through the Attorney General, may institute an
13 action in the name of the People of the State of Illinois,
14 in any court of competent jurisdiction, for the recovery of
15 the amount of such taxes and penalties due, and prosecute
16 the same to final judgment, and take such steps as are
17 necessary to collect the same.

18 (b) Fire Marshal Tax.

19 Each surplus line producer shall file with the Director
20 on or before March 31 of each year a report in the form
21 prescribed by the Director on all fire insurance policies
22 and endorsements filed with the Surplus Line Association of
23 Illinois pursuant to subsection (4) of this Section during
24 the preceding calendar year and ~~procured from unauthorized~~
25 ~~insurers~~ subject to tax under Section 12 of the Fire
26 Investigation Act and shall pay to the Director the fire
27 marshal tax required thereunder for the reported policies
28 and endorsements. At no time shall a surplus line producer
29 pay fire marshal tax relating to a surplus line insurance
30 policy or endorsement that is different than the tax
31 computed at the rate that was in effect at the time that
32 policy incepted.

33 (c) Taxes and fees charged to insured. The taxes
34 imposed under this subsection and the countersigning fees

1 charged by the Surplus Line Association of Illinois may be
2 charged to and collected from surplus line insureds.

3 (4) Bond. Each surplus line producer, as a condition to
4 receiving a surplus line producer's license, shall execute and
5 deliver to the Director a surety bond to the People of the
6 State in the penal sum of \$20,000, with a surety which is
7 authorized to transact business in this State, conditioned that
8 the surplus line producer will pay to the Director the tax,
9 interest and penalties levied under subsection (3) of this
10 Section.

11 (5) Submission of documents to Surplus Line Association of
12 Illinois. A surplus line producer shall submit every insurance
13 contract issued under his or her license to the Surplus Line
14 Association of Illinois for recording and countersignature.
15 The submission and countersignature may be effected through
16 electronic means. The submission shall set forth:

17 (a) the name of the insured;

18 (b) the description and location of the insured
19 property or risk;

20 (c) the amount insured;

21 (d) the gross premiums charged or returned;

22 (e) the name of the unauthorized insurer or domestic
23 surplus line insurer as defined in Section 445a from whom
24 coverage has been procured;

25 (f) the kind or kinds of insurance procured; and

26 (g) amount of premium subject to tax required by
27 Section 12 of the Fire Investigation Act.

28 Proposals, endorsements, and other documents which are
29 incidental to the insurance but which do not affect the
30 premium charged are exempted from filing and
31 countersignature.

32 The submission of insuring contracts to the Surplus
33 Line Association of Illinois constitutes a certification
34 by the surplus line producer or by the insurance producer

1 who presented the risk to the surplus line producer for
2 placement as a surplus line risk that after diligent effort
3 the required insurance could not be procured from insurers
4 which are authorized to transact business in this State
5 other than domestic surplus line insurers as defined in
6 Section 445a and that such procurement was otherwise in
7 accordance with the surplus line law.

8 (6) Countersignature required. It shall be unlawful for an
9 insurance producer to deliver any unauthorized insurer
10 contract or domestic surplus line insurer contract unless such
11 insurance contract is countersigned by the Surplus Line
12 Association of Illinois.

13 (7) Inspection of records. A surplus line producer shall
14 maintain separate records of the business transacted under his
15 or her license, including complete copies of surplus line
16 insurance contracts maintained on paper or by electronic means,
17 which records shall be open at all times for inspection by the
18 Director and by the Surplus Line Association of Illinois.

19 (8) Violations and penalties. The Director may suspend or
20 revoke or refuse to renew a surplus line producer license for
21 any violation of this Code. In addition to or in lieu of
22 suspension or revocation, the Director may subject a surplus
23 line producer to a civil penalty of up to \$2,000 for each cause
24 for suspension or revocation. Such penalty is enforceable under
25 subsection (5) of Section 403A of this Code.

26 (9) Director may declare insurer ineligible. If the
27 Director determines that the further assumption of risks might
28 be hazardous to the policyholders of an unauthorized insurer,
29 the Director may order the Surplus Line Association of Illinois
30 not to countersign insurance contracts evidencing insurance in
31 such insurer and order surplus line producers to cease
32 procuring insurance from such insurer.

33 (10) Service of process upon Director. Insurance contracts
34 delivered under this Section from unauthorized insurers shall

1 contain a provision designating the Director and his successors
2 in office the true and lawful attorney of the insurer upon whom
3 may be served all lawful process in any action, suit or
4 proceeding arising out of such insurance. Service of process
5 made upon the Director to be valid hereunder must state the
6 name of the insured, the name of the unauthorized insurer and
7 identify the contract of insurance. The Director at his option
8 is authorized to forward a copy of the process to the Surplus
9 Line Association of Illinois for delivery to the unauthorized
10 insurer or the Director may deliver the process to the
11 unauthorized insurer by other means which he considers to be
12 reasonably prompt and certain.

13 (11) The Illinois Surplus Line law does not apply to
14 insurance of property and operations of railroads or aircraft
15 engaged in interstate or foreign commerce, insurance of
16 vessels, crafts or hulls, cargoes, marine builder's risks,
17 marine protection and indemnity, or other risks including
18 strikes and war risks insured under ocean or wet marine forms
19 of policies.

20 (12) Surplus line insurance procured under this Section,
21 including insurance procured from a domestic surplus line
22 insurer, is not subject to the provisions of the Illinois
23 Insurance Code other than Sections 123, 123.1, 401, 401.1, 402,
24 403, 403A, 408, 412, 445, 445.1, 445.2, 445.3, 445.4, and all
25 of the provisions of Article XXXI to the extent that the
26 provisions of Article XXXI are not inconsistent with the terms
27 of this Act.

28 (Source: P.A. 92-386, eff. 1-1-02; 93-29, eff. 6-20-03; 93-32,
29 eff. 7-1-03.)

30 Section 99. Effective date. This Act takes effect upon
31 becoming law."